

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA83/2020

In the matter between:

LETRUSH STEEL AND ENGINEERING SUPPLIES                      Applicant

and

PH MALGAS                                                                      First Respondent

METAL INDUSTRIES PROVIDENT FUND                              Second Respondent

METAL INDUSTRIES BENEFIT FUNDS ADMINISTRATORS (PTY) LTD

Third Respondent

THE PENSION FUNDS ADJUDICATOR                              Fourth Respondent

Application for reconsideration of a PFA determination – audi alteram partem requirements.

DECISION

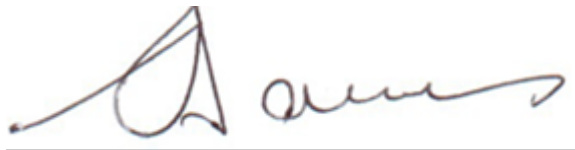
1. The applicant applies for the reconsideration of a determination made by the PFA in favour of the first respondent, the complainant. The applicant is an employer in the metal

industries and is as such an employer for purposes of the Fund, the second respondent, which is administered by the third respondent.

2. The application is under section 230 of the Financial Sector Regulation Act, 2017. The parties have waived their right to a formal hearing.
3. The complainant was in the employ of the employer during the period 11 November 2014 to 14 February 2020. He was dissatisfied with his termination benefits and filed his complaint on the basis that his pension contributions had been deducted from his monthly salary during the period of employment but apparently not been paid over to the Fund. He sought proof of payment and a correct calculation of his termination benefits.
4. The complaint reached the employer via the administrators. It was apparent that no contributions had been paid on his behalf during the period 1 August 2015 to 30 June 2018. The reason why no contributions had been deducted from his salary was that he did not fall under the scope of the bargaining council for that period.
5. The PFA then decided to broaden the enquiry by considering whether the employer was not obliged during that period to nevertheless pay its contribution to the Fund and eventually made a determination on that basis.
6. It is not understood how an employer could make such contributions in relation to someone who is not eligible to be a member of the Fund, but that is for present purposes of lesser concern.
7. The PFA is an administrator in terms of the Promotion of Administrative Justice Act 3 of 2000. In terms of sec 3, an administrator, must give a person (i) adequate notice of the nature and purpose of the proposed administrative action; (ii) a reasonable opportunity to make representations; and (iii) a clear statement of the administrative action.

8. The PFA did not comply with any of these requirements – all basic to the audi alteram partem rule.
9. It may be noted that the PFA in the further reasons does not contend that the determination was legally correct.
10. The determination is set aside and referred back to the PFA for reconsideration.

Signed on behalf of the Tribunal on 20 April 2021.

A handwritten signature in black ink, appearing to read 'LTC Harms', enclosed in a thin black rectangular border.

LTC Harms (deputy chair)